

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
240 777-6600
(www.co.mo.md.us/council/board.html)

Case No. A-5758

APPEAL OF PAUL CHRETIEN

OPINION OF THE BOARD

(Public Hearing Date: September 25, 2002)
(Effective Date of Opinion: November 19, 2002)

Case No. A-5758 is an administrative appeal in which the appellant charges error on the part of the Historic Preservation Commission in its approval of Historic Area Work Permit Number 273163, dated March 28, 2002. Appellant contends that the Historic Preservation Commission “went too far with their authority to reject design...” in imposing conditions on approval of the permit.

Pursuant to Section 59-A-4.11(c) of the Zoning Ordinance, on September 25, 2002, the Board of Appeals held a public hearing on the administrative appeal. Peter Fayne, Esquire appeared on behalf of the appellant, Paul Chretien. Vickie Gaul, Esquire, appeared on behalf of the Historic Preservation Commission, she called as witnesses Gwen Marcus Wright, Historic Preservation Supervisor for the Historic Preservation Commission and Kim Williams, a Commissioner on the Historic Preservation Commission.

Decision of the Board: Administrative Appeal **Granted** in part and **Denied** in part.

EVIDENCE PRESENTED

1. The subject property is Parcel 404, located at 19820 White Ground Road, Boyds, Maryland, in the RE01 Zone.
2. On January 29, 2002 Paul Chretien filed an Application Number 18/08-02A for a Historic Area Work Permit for work on the subject property. [Exhibit No. 13(b)].

3. On February 6, 2002 Historic Preservation Commission Staff issued a report recommending approval of Application Number 18/08-02A with the condition that no tree larger than six inches in diameter be removed.

4. On February 13, 2002 the Historic Preservation Commission (HPC) held a hearing on the application and voted to continue the hearing to February 27, 2002, advising Mr. Chretien to re-design the proposed house to change "the exterior design and detailing, including the massing issues, roof height, ...to make the house more compatible" [Exhibit No. 13(d) pp. 54-56].

5. On February 27, 2002, the HPC reconvened the hearing on Mr. Chretien's application. Commissioners expressed concern about the following aspects of the design of the house: massing, particularly relating to the side wing, scaling in terms of building height, hierarchy of the massing design. [Exhibit No. 13(g)]. The HPC voted to defer the case until its next meeting, recommending that the Applicant work with HPC staff on re-designing the house.

6. On March 13, 2002, HPC staff issued a report recommending approval of Application Number 18/08-02A with the following conditions:

- "1) Barn returns to 1-story building
- 2) Chimney on right elevation is to be removed from application
- 3) side wing extension will be reduced in width to no greater than 18'
- 4) The newly-configured side wing extension's dormer proportions to be reviewed at staff level." [Exhibit No. 13(k)].

7. On March 13, 2002 the HPC voted to approve Application Number 18/08-02A, with the above-listed conditions and allowing staff approval of reconsideration of the number of windows on the side wing.

8. On March 28, 2002, the Department of Permitting Services issued Historic Area Work Permit (HAWP) number 273163, with the conditions enumerated by the HPC.

9. On appeal, Mr. Chretien requests that the barn be allowed to be two stories, so that he can store hay in the second story. He requests approval of the second chimney, for a working fireplace. He requests that the width of side wing be approved at 23 feet. Mr. Fayne stated that the visual impact of the house will be mitigated by the distance the house is set back and by the topography of the subject site. [Transcript, September 25, 2002, p.8].

10. Commissioner Williams testified that the HPC evaluated Mr. Chretien's application with reference to "The Vision of Boyds", a document that sets out criteria for evaluating new construction in the Boyds historic district, and to the Secretary of Interior's Standards and Guidelines for Rehabilitation and New Construction, which the HPC adopted by Resolution in November 1997. [Exhibit

No. 13(a), para. n]. She stated that the Commission felt that the proposal was inconsistent with those criteria, "Primarily...the scale, building height, and massing." [Transcript, September 25, 2002, p. 76-77].

11. She stated that the Commission was lenient in its evaluation of the location of the house on the lot. [Ibid, p.80].

12. She stated that the side wing proposed for the house was incompatible with the character of the historic district, because "There are no historic houses in Boyds with side wings" and it "visually presents the appearance of a two-car side garage wing." [Ibid, p. 83], She stated that "ideally, the Commission would like to eliminate the side wing altogether, but we were trying to be lenient, and we were hoping to mitigate the overwhelming massing and presence of the side wing by eliminating a five-foot section of it." [Ibid, p.87].

13. Regarding the condition requiring removal of the right chimney, Ms. Williams stated that as proposed with two chimneys, the house "presents the appearance of a very formal late-18th/early-19th century house. All of the history architecture in Boyds is of a vernacular quality, and this [proposal] goes counter to the vernacular aspect of the existing buildings." [Ibid, p. 84].

14. In response to a Board question regarding the consistency of a two-story barn with the 'Vision of Boyds', Ms. Williams stated, "The applicant has indicated that there are two-story barns. I have no huge objection to that," and "...the fact that he would be continuing agricultural use is an enhancement." [Ibid, p. 89].

FINDINGS OF THE BOARD

1. Section 59-A-4.3(e) of the Zoning Ordinance authorizes *de novo* appeals to the Board from any action taken by a department of the County government, including the Historic Preservation Commission. Therefore, the HAWP can be appealed, *de novo*, to the Board.

2. As the issuance of the HAWP was heard *de novo*, the Board hearing was an entirely new hearing on the propriety of the HAWP as if no determination had been made by the HPC. *Boehm v. Anne Arundel County*, 54 Md. App. 497, 511, 459 A.2d 590, 599, cert. denied, 297 Md. 108 (1983)

3. The County had the burden of demonstrating that the HAWP was properly conditioned. Since the Board hearing proceeded as an original administrative determination, the burden of proof and burden of persuasion were allocated as with the original determination by the HPC. See, *Lohrman v. Arundel Corp.*, 65 Md. App. 309, 318, 500 A.2d 344, 349 (1985). The *de novo* hearing puts all parties back at square one to begin again just as if the HPC determination

appealed from had never occurred. See, *General Motors Corp. v. Bark*, 79 Md. App. 68, 79, 555 A.2d 542, 547 (1989).

4. Based upon Commissioner Williams's testimony and the evidence of record, the Board finds that there are no historic houses in Boyds with side wings, and that the appearance of the house with two chimneys is not consistent with the architecture in the Boyds historic district.

5. Section 24A-8. of the Montgomery County Code provides, pertaining to the criteria for issuance of historic area work permits:

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship

6. The Board finds that the side wing of the proposed house, and the chimney on the right side of the house are not compatible with the historical and architectural features of the Boyds historic district, and that they would be detrimental to those features of the historic district. The Board finds that a two-story, working barn will not be detrimental to the Boyds historic district.

7. The Board finds that Mr. Chretien can build a house without the side wing and without the second chimney, and that requiring removal of those features does not deprive him of reasonable use of the property.

Section 24A-8(d) of the Montgomery County Code provides:

In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design

significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.

8. The Board finds that the Historic Preservation Commission exercised leniency in approving a work permit in allowing the 18-foot side wing.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that condition number 1 of permit number 273163 requiring a one-story barn is **reversed** and the request to build a two-storey barn is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County Maryland that condition number 2 of permit number 273163 is **affirmed** and the request to add a chimney on the right side of the house is **denied**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County Maryland that condition number 3 of permit number 273163 is **affirmed** and the request to build a side wing 23 feet wide is **denied**;

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County Maryland that condition number 4 of permit number 273163 is **affirmed** and that the proportions of the dormers on the side wing will be subject to staff review.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of November, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.